

VII. COMMENTS AND RESPONSES

Introduction

The Initial Study/Mitigated Negative Declaration (IS/MND) (dated August 2020) was released for public review on August 10, 2020. The review period for the IS/MND closed on September 9, 2020.

This section contains all public comments received during the public review period. Following each public comment, responses have been provided by the City of Clayton. Under the California Environmental Quality Act (CEQA) and implementing Guidelines, the City of Clayton, as the “lead agency” is not required to respond to comments on a mitigated negative declaration. Nevertheless, in order to ensure that public questions and concerns regarding environmental issues are addressed, responses are provided to all comments on environmental issues.

Number	Commentator	Date
1	Contra Costa Water District	August 27, 2020
2	Randy Hatch, Planning Consultation	August 30, 2020
3	Discovery Builders, Inc. (Project Applicant)	September 4, 2020

The Responses to Comments below includes each comment letter received regarding the Oak Creek Canyon Project IS/MND, as well as responses to each comment. Each bracketed comment letter is followed by numbered responses to each bracketed comment. Where revisions to the IS/MND text were made, new text is double underlined and deleted text is ~~struck through~~. CEQA Guidelines Section 15073.5 states the following regarding recirculation requirements for negative declarations:

- (a) *A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.*
- (b) *A “substantial revision” revision of the negative declaration shall mean:*
 - (1) *A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or*
 - (2) *The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.*
- (c) *Recirculation is not required under the following circumstances:*
 - (1) *Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.*

- (2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.*
- (3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.*
- (3) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.*
- (d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.*

Based on the responses to comments presented below and the Errata prepared for the IS/MND, and pursuant to CEQA Guidelines Section 15073.5, recirculation of the IS/MND is not warranted.



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August 27, 2020

SENT VIA HARDCOPY & EMAIL

Ms. Christine Gregory
Community Development Department
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

Subject: Comment Letter Regarding the Oak Creek Canyon Project Initial Study/Mitigated Negative Declaration (ENV 02-16)

Dear Ms. Gregory:

1-1

The Oak Creek Canyon Project is intended to create six single family homes is close proximity to the Contra Costa Water District's Seminary Water Tank off of Marsh Creek Road in Clayton. CCWD sent a comment letter on December 15, 2017 (attached) for the above-mentioned project.

CCWD's provides the following input on the project's August 2020 Initial Study/Mitigated Negative Declaration (IS/MND), pursuant to the California Environmental Quality Act (CEQA):

1-2

1. There are many references in the document to the District as the "Contra Costa County Water District". Please note that it is the Contra Costa Water District.

1-3

2. The IS/MND contains recommendations from the Geotechnical Report to repair a surficial landslide and areas of colluvium mapped along the slopes above Proposed Project Lots 1 and 2. This repair would involve "overexcavation and removal, and replacement with property drained engineered fill".

Figure 14 of the IS/MND shows the extents of grading. These slopes are adjacent to and downslope of CCWD's Seminary Water Tank, a 500,000-gallon tank that holds treated water that serves the Town of Clayton.

Since this is an extensive grading project, CCWD is concerned about slope integrity at this site. Any and all measures shall be taken to ensure that any site grading will not impact CCWD's property and water tank. Therefore, please add a condition to the Conditions of Approval that CCWD must review and approve the final grading plans for this grading activity before it can commence.

Ms. Christine Gregory
City of Clayton
August 27, 2020
Page 2

1-4

3. The Utilities section of the IS/MND states that the project will use the CCWD 8-inch treated water main that is in Marsh Creek Road. This may not be correct. The CCWD December 15, 2017 letter contains pertinent and correct info as items 3-5. I've listed them here for your convenience. Please add this to the Administrative Record.
 - The existing 4-inch blow-off appurtenance at the creek discharge at the new Diablo Parkway/Sage Lane intersection shall remain and be accessible for future CCWD maintenance (Sage Lane is listed as Salt Brush Lane in the IS/MND).
 - A water main extension will be required down Sage Lane to serve this new development.
 - The existing water infrastructure will need to be evaluated and any modifications will need to be designed and constructed at the Developer's expense.

Should you require further clarification on these comments, please contact me at (510) 406-1889.

Sincerely,



Christine Schneider
Senior Planner

CS:ck

Attachment

cc: Mark Seedall

Letter 1, Contra Costa Water District – August 27, 2020

Response to Comment 1-1

The comment is an introductory statement, and does not address the adequacy of the IS/MND.

Response to Comment 1-2

In response to the comment, page 3 of the IS/MND is hereby revised as follows:

The central portion of the site wraps around a 1.68-acre parcel owned by the Contra Costa ~~County~~ Water District (CCWD). The CCWD parcel contains a 500,000-gallon water tank, various associated infrastructure, and a small number of trees. Vehicular access and pipeline easements serving the water tank on the CCWD parcel cross the western portion of the proposed project site, extending towards Marsh Creek Road. In addition, several oil pipeline operation and maintenance easements owned by Getty Oil Company are situated along the eastern site boundary. Within the easements are a 20-inch vacant pipeline operated by Crimson and a 16-inch gas line operated by Phillips 66. Four active oil pipelines are located in Marsh Creek Road along the project site frontage. One is a 20-inch pipeline owned by Crimson Midstream, LLC. The other three lines along Marsh Creek Road consist of a 16-inch pipeline, a 20-inch pipeline, and a 24-inch pipeline operated by Coalinga-Avon.

Response to Comment 1-3

The commenter's concerns are noted. The City will ensure that the project conditions of approval include a requirement that CCWD must review and provide comments on the final grading plans for the project prior to City approval.

Response to Comment 1-4

The City will include a condition of approval that would require the final water system design be reviewed by the CCWD and any necessary modifications be made prior to grading permit issuance.



RANDY HATCH
Planning
Consultation

August 30, 2020

Julie Pierce, Mayor
City of Clayton
6000 Heritage Trail
Clayton, Ca. 94517

Re: IS/MND ENV-02-16, GPA-02-18, et al

Dear Mayor Pierce,

I want to thank you for your public service for over 30 years on behalf of the citizens of the City of Clayton and for advocating for good and thoughtful urban planning. As you recall, I worked as the Planning Director for the City of Clayton from 1990 to 2000. For over one half of that time, we worked together on the on future residential development southeast of Clayton along Marsh Creek Road.

2-1

As background, Contra Costa County had requested that the City study the region and develop planning documents laying out the City's vision. So, working collaboratively, I was part of a comprehensive effort with you and the Planning Commission, the City Council, land owners, environmental consultants, engineers, and land planners and countless citizens of Clayton in over 100 public meetings during a more than 4-year time span. The effort culminated in a thoughtful study and plan that was approved in June 1995 known as the Marsh Creek Road Specific Plan (MCRSP). Unfortunately, Contra Costa County did not allow the plan that they requested to be implemented as the Urban Limit Line has delayed the home development that we worked so hard to plan for.

As a lifelong professional planner living in Northern California it is my opinion and that of many others that many more homes need to be planned and built in Northern California to help alleviate the housing crises that now the whole State faces.

7505 Oakcreek Drive, Stockton, California 95207 (209) 986-3977

randyhatch@sbcglobal.net

Julie Pierce, Mayor
Page Two

2-2

I have become aware of and reviewed the proposed application that Oakcreek Canyon has submitted to the City. In the "Notice Of Intent To Consider Adoption Of A Mitigated Negative Declaration" that has been released for this Project it says under Findings that "All other impacts in the categories of ...land use and planning...were found to be less than significant". As I detail below that is not an accurate statement. I am requesting that the City require the developer to comply with the standards outlined in the MCRSP. Otherwise, the opportunity to implement the Specific Plan with potentially 108 housing units planned to the east will be lost forever and all the precious time we spent together planning for the area will be blocked from ever happening.

Specifically, in order for the plan to comply our longstanding MCRSP I am suggesting the following modifications / mitigations:

2-3

1. Road width & elevation to insure connection to former Heartland and Moita properties who both helped pay for and participated in the Specific Plan project;

2-4

2. That the sizing and placement of utilities be consistent with the MCRSP;

2-5

3. That the drainage basin be sized for future development per the MCRSP;

2-6

4. That the road alignments and right-of-way conform to the MCRSP;

2-7

5. That the density and number of units also follow the Specific Plan.

2-8

Thank you for your consideration of my comments. Though not a resident of Clayton, I care deeply about the community and view my past service there fondly.

Feel free to contact me as needed,

Respectfully,


Randy Hatch

Phone: (209) 986-3977

Email: randyhatch@sbcglobal.net

CC: Christina Gregory; Jim Moita; RickAngrisani

Letter 2, Randy Hatch, Planning Consultation – August 30, 2020

Response to Comment 2-1

The comment does not address the adequacy of the IS/MND.

Response to Comment 2-2

The commenter summarizes their specific concerns detailed in the remainder of their comments. See Responses to Comments 2-3 through 2-7 below.

Response to Comment 2-3

The proposed “Saltbrush Lane” right-of-way is conditioned to be 48 feet and graded to the full section noted in the Marsh Creek Road Specific Plan (MCRSP). The project plan allows future development of the lands to the east as envisioned in the MCRSP.

Response to Comment 2-4

The project plans show proposed utilities to serve the proposed six lots. The CCWD, City of Concord, and Contra Costa County each will require their individual approval of sizing prior to the approval of the project construction plans.

Response to Comment 2-5

The drainage basin is sized to accommodate the proposed six residential units. Subsequent projects will be required to demonstrate adequate detention based on the size and runoff of each designed project as noted in the MCRSP.

Response to Comment 2-6

See Response to Comment 2-3.

Response to Comment 2-7

The construction of six homes is within the General Plan and MCRSP low-density designation. Since the MCRSP was adopted in 1995, subsequent City Municipal Code updates eliminated sensitive land inclusion in density calculations.

Response to Comment 2-8

The comment does not address the adequacy of the IS/MND.

Letter 3



4061 Port Chicago Highway, Suite H
Concord, California 94520
(925) 682-6419
Fax (925) 689-7741

September 4, 2020

City of Clayton
Community Development Department
c/o Christine Gregory, AICP, Planner
600 Heritage Trail
Clayton, CA 94517

Re: Applicant comments regarding the Oak Creek Canyon Initial Study/Mitigated Negative Declaration
Dated August 2020

3-1

Dear Ms. Gregory,
We request the attached edits be made to this document based on the following explanations;
Page 5. III. Background. Second paragraph.
Previous project entitlements have not expired.

3-2

Page 3. Project Description.
Further clarifying the location of the easements as being "outside" and parallel to the eastern site boundary. Please modify.

3-3

Page 19. VI. List of Mitigation Measures/Mitigation Measure 4.
The first paragraph assumes the existence of wetlands, although it has not yet been determined. Please delete.

3-4

Page 20. VI. List of Mitigation Measures/Mitigation Measure 5.e)
The manner of pruning should be dictated by an arborist. Please modify.

3-5

Page 21. VI. List of Mitigation Measures/Mitigation Measure 6.
The County Coroner should be notified in addition to the City.
Work within "100 feet of the vicinity of the discovery" is a common standard. This allows protection and continuance of the project construction. Please modify.

3-6

Page 46. Mitigation Measure 4.
See Page 19 above.

3-7

Page 48. Mitigation Measure 5.e).

3-7
cont'd

↑ See Page 20 above.

Thank you for your consideration on these items and I look forward receiving the staff report and attending the public hearing in October.

Sincerely,



Kevin English

Director of Advance Planning and Land Acquisitions

Attachment: IS/MND applicant red line

3-8

III. BACKGROUND

The Oak Canyon Creek Annexation and Residential Subdivision Project was approved by the City of Clayton on April 5, 2005, along with adoption of an Initial Study/Mitigated Negative Declaration (IS/MND); however, the project was never constructed.¹ The previously-approved entitlements for the project included a property annexation, a General Plan Amendment, an amendment to the *Marsh Creek Road Specific Plan*, pre-zoning of the project site, a tentative subdivision map for five single-family lots and one lot for a bio-retention basin, a Site Plan review permit for home landscape and design, and a Use Permit for the stormwater basin. It should be noted that the General Plan Amendment pertained to a parcel that is not included in the current project proposal.

~~Given that original project was never constructed, several project entitlements have since expired. In addition,~~ The project applicant has modified the project to include six homes instead of the five homes included in the originally approved project proposal, and the size of the proposed bio-retention basin has been modified/reduced. As discussed in greater detail below, the project applicant is requesting approval of a General Plan Amendment, Rezone, new Vesting Tentative Subdivision Map, Site Plan Review Permit, and Use Permit for the proposed bio-retention basin.

This IS/MND identifies and analyzes the potential environmental impacts of the current proposal for the Oak Creek Canyon Project. The information and analysis presented in this document is organized in accordance with the order of the CEQA checklist in Appendix G of the CEQA Guidelines. If the analysis provided in this document identifies potentially significant environmental effects of the project, mitigation measures that should be applied to the project are prescribed.

This IS/MND relies on site-specific studies prepared for the project, the City of Clayton General Plan, the *Marsh Creek Road Specific Plan*, the *Marsh Creek Road Specific Plan Environmental Impact Report* (Specific Plan EIR),² and, where applicable, information from the 2005 Initial Study previously approved by the City.

IV. PROJECT DESCRIPTION

A description of the project location and setting, the components of the project, and project entitlements is provided below.

Site Location and Setting

The proposed project site consists of approximately 9.03 acres of land located northwest of the intersection of Marsh Creek Road and Diablo Parkway in the City of Clayton, California (see ~~Figure 1~~Figure-1 and ~~Figure 2~~Figure-2). The site is identified by Assessor's Parcel Number (APN) 119-070-008.

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¹ City of Clayton. *Initial Environmental Study/Negative Declaration (ENV 02-03)*. April 5, 2005.

² City of Clayton. *Marsh Creek Road Specific Plan Environmental Impact Report*. June 28, 1995.

3-9

The proposed project site, as well as the areas to the northeast and east of the project site, are within the planning area of the *Marsh Creek Road Specific Plan*, within unincorporated Contra Costa County.³ The areas west, north, and south of the project site are outside of the *Marsh Creek Road Specific Plan*, but within the Clayton city limits. The site is designated Single-Family Low Density (LD), Public/Quasi-Public (PQ), and Private Open Space (PR) per the City of Clayton General Plan and zoned Single-Family Residential (R-10) and Public Facility (PF). Will update with Marsh Creek Road Specific Plan land use designations upon receipt from the City.

Currently, the project site is vacant and undeveloped, consisting primarily of annual grasses and weedy vegetation. The site slopes downward from north to south towards Marsh Creek Road along the site's southern boundary. An existing drainage swale traverses the southeast portion of the project site in a northeast to southwest direction and discharges into a storm drain system at the intersection of Marsh Creek Road and Diablo Parkway.

The central portion of the site wraps around a 1.68-acre parcel owned by the Contra Costa County Water District (CCCWD). The CCCWD parcel contains a 500,000-gallon water tank, various associated infrastructure, and a small number of trees. Vehicular access and pipeline easements serving the water tank on the CCCWD parcel cross the western portion of the proposed project site, extending towards Marsh Creek Road. In addition, several oil pipeline operation and maintenance easements owned by Getty Oil Company are situated outside and parallel to the eastern site boundary. From the northeast corner of the site, the pipeline and maintenance easements continue westward, parallel with the northern property line of the West Coast and Water District parcels. Two inactive 20-foot steel pipelines operated by Shell Pipeline Company are located in the easement. One was de-activated in 1988 and the second was de-activated in 2001.⁴ Lastly, two active oil pipelines are located in Marsh Creek Road along the project site frontage.⁵ One is a 20-foot pipeline owned by Shell Pipeline Company, installed in 2001 by Equilon Pipeline Company. The second is a 16-foot pipeline operated by Tosco Pipeline Company installed in the late 1990's.

Surrounding Land Uses

The project site is bordered primarily by hilly, undeveloped open space areas to the north and east. The Clayton Community Park is located approximately 750 feet north of the site behind an intervening knoll. Surrounding land uses to the south and west of the project site consist of single-family residential subdivisions.

Project Components

The proposed project would require approval of a General Plan Amendment, Rezone, Vesting Tentative Subdivision Map, Site Plan Review Permit, and Use Permit. Each of the project components is discussed in detail below.

³ City of Clayton. *Marsh Creek Road Specific Plan*. Adopted June 28, 1995.

⁴ Madden, Mike, Isakson & Associates. Personal Communication with Raney Planning & Management, Inc. November 19, 2004.

⁵ Ibid.

3-10

encountered on the site shall also be completed and submitted to the City of Clayton and CNDDB.

Results of surveys shall inform project design. In order to comply with the ECCHCP/NCCP, construction activities shall avoid all impacts on extremely rare no take species and shall implement plant salvage when impacted covered plant species are unavoidable. Conservation measures described in the ECCHCP/NCCP shall be adhered to. If a rare plant is found that is not covered by the ECCHCP/NCCP, appropriate conservation measures similar to those required by the ECCHCP/NCCP shall be developed on a plant by plant basis and in accordance with CDFW and CNPS.

Mitigation Measure 4. ~~Prior to approval of grading plans for the proposed project, the project applicant shall complete a formal wetland delineation and submit the delineation to the U.S. Army Corps of Engineers (USACE) for verification.~~

In the event that the proposed project site is determined to include jurisdictional wetlands that would be altered as part of the proposed development, a Section 404 permit for fill of jurisdictional wetlands shall be acquired, and mitigation for impacts to jurisdictional waters that cannot be avoided shall conform with the USACE "no-net-loss" policy prior to approval of grading plans. ~~To the extent feasible, however, the project shall be designed to avoid and minimize adverse effects to waters of the U.S. or jurisdictional waters of the State of California within the project area.~~ Mitigation for impacts to both federal and State jurisdictional waters shall be addressed using these guidelines.

If a Section 404 permit is obtained, the applicant must also obtain a water quality certification from the RWQCB under Section 401 of the Clean Water Act (CWA). Written verification of the Section 404 permit and the Section 401 water quality certification shall be submitted to the Community Development Department.

The applicant shall also provide evidence to the Community Development Department of consultation with CDFW to determine if a Streambed Alteration Agreement is required for on-site activities pursuant to Section 1602 of the State Fish and Game Code.

If the mapped drainage shown on the USGS and other data sources is determined by regulatory agencies to be a jurisdictional waters on the site, then an ECCHCP/NCCP fee calculation for permanent impacts to wetlands or streams should be assessed in addition to the development fee, unless the design of the proposed project is modified to avoid regulated habitat or provide adequate alternative compensatory mitigation.

Mitigation Measure 5. The following tree protection measures shall be implemented pursuant to the recommendations listed in the Arborist Report, to the extent feasible:

- The applicant shall submit for the review and approval of the Community Development Director a tree protection plan to identify the location of the existing trees to be retained, as identified in the Arborist Report.

3-11

- Adjust the proposed Marsh Creek Road path design to provide two feet of additional clearance from tree #43.
- Prior to construction or grading, the project contractor shall install fencing to construct a temporary Tree Protection Zone (TPZ) around trees #43 and #60.
- TPZ fencing shall remain in an upright sturdy manner from the start of grading until the completion of construction. Fencing shall not be adjusted or removed without consulting the project arborist.
- If roots greater than two-inches in diameter are encountered near tree #61 during construction of the proposed ditch, roots shall be cleanly pruned *with a handsaw or sawzall as recommended by an arborist.*
- Pruning shall be performed by personnel certified by the International Society of Arboriculture (ISA). All pruning shall adhere to ISA and American National Standards and Best Management Practices.
- Should TPZ encroachment be necessary, the project contractor shall contact the project arborist for consultation and recommendations.
- The project contractor shall keep TPZs free of all construction-related materials, debris, fill soil, equipment, etc. The only acceptable material is mulch spread out beneath the trees.
- Should any damage to the trees occur, the contractor shall promptly notify the project arborist to appropriately mitigate the damage.

Mitigation Measure 6. Prior to the issuance of a grading permit, the grading plan shall include a requirement (via notation) indicating that if cultural resources, or human remains are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the area of discovery and the contractor shall immediately notify the *County Coroner and the City* of the discovery. In such case, the City, at the expense of the project applicant, shall retain the services of a qualified archaeologist for the purpose of *addressing recording, protecting, or curating* the discovery as appropriate. The archaeologist shall be required to submit to the City for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within *100 feet of the* vicinity of the discovery, as identified by the qualified archaeologist, shall not be allowed until the preceding steps have been taken.

3-12

Mitigation Measure 7. Pursuant to State Health and Safety Code §7050.5(c) State Public Resources Code §5097.98, if human bone or bone of unknown origin is found during construction, all work shall stop within 100 feet of the vicinity of the find and the Contra Costa County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission who shall notify the person believed to be the Most Likely Descendant (MLD). The MLD shall work with the contractor to develop a program for re-interment of the human remains and any associated artifacts. Additional work shall not take place in the immediate vicinity of the find, which shall be identified by the qualified archaeologist at the applicant's expense, until the preceding actions have been implemented.

Mitigation Measure 8. Prior to approval of the improvement plans for the project, all recommendations from the Geotechnical Report prepared for the project by ENGEO (2008)

Initial Study/Mitigated Negative Declaration (ENV-01-15)
Oak Creek Canyon Project

3-13

and leave the site in the vicinity of the mapped drainage alignment. Such information provides an indication that jurisdictional waters may be present on the site, and that a determination by the USACE as part of the wetland delineation verification process for atypical conditions is warranted.

In the event that the on-site drainage feature is determined to be under the jurisdiction of the USACE, the project applicant would be required to obtain permits from regulatory agencies for construction activities associated with the channel (Section 404 Clean Water Act Nationwide permit, Section 401 Water Quality Certification, and Section 1600 Lake and Streambed Alteration Agreement). It should be noted that construction of the proposed 48-inch storm drain pipe would be limited to the project site and would not include any construction work within the portion of the existing drainage channel located in unincorporated Contra Costa County to the east of the site. As such, issuance of a Contra Costa County Drainage Permit from the Contra Costa County Flood Control & Water Conservation District would not be required.

Based on the above, the proposed project could result in a *potentially significant* impact related to having a substantial adverse effect on a state or federally protected wetlands (including, but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above potential impact to a *less-than-significant* level.

Mitigation Measure 4.

~~Prior to approval of grading plans for the proposed project, the project applicant shall complete a formal wetland delineation and submit the delineation to the U.S. Army Corps of Engineers (USACE) for verification.~~

In the event that the proposed project site is determined to include jurisdictional wetlands that would be altered as part of the proposed development, a Section 404 permit for fill of jurisdictional wetlands shall be acquired, and mitigation for impacts to jurisdictional waters that cannot be avoided shall conform with the USACE "no-net-loss" policy prior to approval of grading plans. To the extent feasible, however, the project shall be designed to avoid and minimize adverse effects to waters of the U.S. or jurisdictional waters of the State of California within the project area. Mitigation for impacts to both federal and State jurisdictional waters shall be addressed using these guidelines.

If a Section 404 permit is obtained, the applicant must also obtain a water quality certification from the RWQCB under Section 401 of the Clean Water Act (CWA). Written verification of the Section 404 permit and the Section 401 water quality certification shall be submitted to the

3-14

- If roots greater than two-inches in diameter are encountered near tree #61 during construction of the proposed ditch, roots shall be cleanly pruned with as recommended by the arborist, handsaw-or sawzall.
- Pruning shall be performed by personnel certified by the International Society of Arboriculture (ISA). All pruning shall adhere to ISA and American National Standards and Best Management Practices.
- Should TPZ encroachment be necessary, the project contractor shall contact the project arborist for consultation and recommendations.
- The project contractor shall keep TPZs free of all construction-related materials, debris, fill soil, equipment, etc. The only acceptable material is mulch spread out beneath the trees.
- Should any damage to the trees occur, the contractor shall promptly notify the project arborist to appropriately mitigate the damage.

f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan? Less-Than-Significant-Impact

Discussion (f.)

The ECCCHCP/NCCP was prepared in 2007 and the City of Clayton became a signatory in January 2008. The ECCCHCP/NCCP is intended to provide a coordinated, regional approach to special-status species conservation and development regulation. A total of 28 species are covered under the ECCCHCP/NCCP. The ECCCHCP/NCCP provides streamlined permits from the USFWS and CDFW for covered species for new urban development projects and a variety of public infrastructure projects. Development fees within the ECCCHCP/NCCP area are assessed based on fee zones and land cover types.

A Planning Survey Report has been prepared for the proposed project in order to comply with and receive permit coverage under the ECCHCP/NCCP. Per the Planning Survey Report, the project site is located within Development Fee Zone 2. As noted previously, the site comprises two field-verified land cover types: 6.57 acres of annual grassland and 2.46 acres of ruderal grassland. The proposed project would be subject to pay all applicable fees according to the Fee Zone Map of the ECCCHCP/NCCP prior to construction.. Therefore, the project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan, and a *less-than-significant* impact would result from the proposed project.

Letter 3, Discovery Builders, Inc. (Project Applicant) – September 4, 2020

Response to Comment 3-1

On April 19, 2005, the City of Clayton City Council approved development of the project site with five single-family residences. Since that time, three associated entitlements have expired. The three applications that have expired include the previous Vesting Tentative Subdivision Map (MAP 04-03), the Use Permit required for the detention basin on Lot #6 (UP 01-05), and the required Site Plan Review (SPR 16-03). As such, revisions to the IS/MND are not required.

Response to Comment 3-2

As shown in Figure 6, Vesting Tentative Subdivision Map, on page 8 of the IS/MND, a 20-foot Getty oil easement and a 45-foot Getty oil easement are noted as being located within the eastern boundary of the site. As such, the discussion within the IS/MND is accurate and revisions are not required.

Response to Comment 3-3

The first paragraph does not assume the existence of wetlands. Rather, the paragraph and the requirements therein are necessary to confirm whether the area in the southeastern corner of the site would be considered jurisdictional. This area is mapped as an intermittent blue-line stream on the USGS Quadrangle, as well as the Aquatic Resources Inventory contained in Appendix J of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP). As noted in Environmental Collaborative's Peer Review¹ of the Planning Survey Report and Biological Assessment prepared for the project site by Swaim Biological, Inc., without a formal wetland delineation verified by the Corps, the potential for jurisdictional waters (either wetlands or other waters) remains unresolved because of the atypical conditions from the routine disking of the lower elevations of the site. Mapping data and evidence observed in the field indicates that concentrated surface flows reach and leave the site in the vicinity of the mapped drainage alignment. This information provides an indication that jurisdictional waters may be present on the site, and that a determination by the Corps as part of the wetland delineation verification process for atypical conditions is warranted. Thus, the language in Mitigation Measure 4 requiring a formal wetland delineation is accurate and necessary, and the suggested revisions to the IS/MND are not warranted.

Response to Comment 3-4

In response to the comment, Mitigation Measure 5 on page 20 and page 48 of the IS/MND is hereby revised as follows:

Mitigation Measure 5. The following tree protection measures shall be implemented pursuant to the recommendations listed in the Arborist Report, to the extent feasible:

¹ Environmental Collaborative. *Peer Review of Planning Survey Report, Oak Creek Canyon Updated CEQA Review, Clayton, California* [pg. 3]. February 8, 2018.

- a) *The applicant shall submit for the review and approval of the Community Development Director a tree protection plan to identify the location of the existing trees to be retained, as identified in the Arborist Report.*
- b) *Adjust the proposed Marsh Creek Road path design to provide two feet of additional clearance from tree #43.*
- c) *Prior to construction or grading, the project contractor shall install fencing to construct a temporary Tree Protection Zone (TPZ) around trees #43 and #60.*
- d) *TPZ fencing shall remain in an upright sturdy manner from the start of grading until the completion of construction. Fencing shall not be adjusted or removed without consulting the project arborist.*
- e) *If roots greater than two-inches in diameter are encountered near tree #61 during construction of the proposed ditch, roots shall be cleanly pruned with a handsaw, ~~or~~ sawzall, or as recommended by an arborist.*
- f) *Pruning shall be performed by personnel certified by the International Society of Arboriculture (ISA). All pruning shall adhere to ISA and American National Standards and Best Management Practices.*
- g) *Should TPZ encroachment be necessary, the project contractor shall contact the project arborist for consultation and recommendations.*
- h) *The project contractor shall keep TPZs free of all construction-related materials, debris, fill soil, equipment, etc. The only acceptable material is mulch spread out beneath the trees.*
- i) *Should any damage to the trees occur, the contractor shall promptly notify the project arborist to appropriately mitigate the damage.*

Response to Comment 3-5

Mitigation Measure 6 already requires that construction activities be stopped within 100 feet of the discovery. Depending on the details of the discovery, a buffer zone of another size (larger or smaller than 100 feet) may be required, which would be determined by the archaeologist, as noted in Mitigation Measure 6. Thus, the suggested revisions to Mitigation Measure 6 are not necessary and have not been reflected in the IS/MND. Notification of the County Coroner would only be required in the event that human remains are discovered within the site – in such a case, the City would initiate contact with the Coroner as required in Mitigation Measure 7. Thus, the revisions suggested by the commenter are not necessary.

Response to Comment 3-6

See Response to Comment 3-3.

Response to Comment 3-7

See Response to Comment 3-4.

Response to Comment 3-8

In response to the comment, the following minor revisions are hereby made to the Background section on page 5 of the IS/MND:

Given that original project was never constructed, several project entitlements have since expired. In addition, the project applicant has modified the project to include six homes instead of the five homes included in the original approved project proposal, and the size of the proposed bio-retention basin has been modified and reduced. As discussed in greater detail below, the project applicant is requesting approval of a General Plan Amendment, Zoning Map Amendment, Marsh Creek Road Specific Plan Map Amendment, new Vesting Tentative Subdivision Map, Development Plan Review Permit, and a Tree Removal Permit.

Response to Comment 3-9

See Response to Comment 3-2.

Response to Comment 3-10

See Response to Comment 3-3.

Response to Comment 3-11

See Response to Comment 3-4.

Response to Comment 3-12

See Response to Comment 3-5.

Response to Comment 3-13

See Response to Comment 3-3.

Response to Comment 3-14

See Response to Comment 3-4.